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**FILED**

Date 2/22/10 By Kelli Okuma

8 **BEFORE THE**  
9 **STRUCTURAL PEST CONTROL BOARD**  
10 **DEPARTMENT OF PESTICIDE REGULATION**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2010-57

12 **DONPEDRO'S TERMITE CONTROL CO.**  
13 **95 North Rancho Place**  
**EI Sobrante, California 94803**

**ACCUSATION**

14 **Company Registration No. PR 1450,**  
**Branch 3**

15 and

16 **GEORGE DON-PEDRO**  
17 **95 North Rancho Place**  
18 **EI Sobrante, California 94803.**

19 **Operator's License No. OPR 8197**

20 Respondents.

21  
22 Complainant alleges:

23 PARTIES

24 1. Kelli Okuma (Complainant) brings this Accusation solely in her official capacity as  
25 the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide  
26 Regulation.

27 2. On or about July 28, 1988, the Structural Pest Control Board issued Company  
28 Registration Number PR 1450, Branch 3 to DonPedro's Termite Control Company ("Respondent

1 DonPedro Termite Control Co.” or “subject company”), with George Don-Pedro as Owner and  
2 Qualifying Manager.

3 3. On or about July 28, 1988, the Structural Pest Control Board issued Operator's  
4 License Number OPR 8197, Branch 3, to Don-Pedro, Owner and Qualifying Manager of  
5 DonPedro's Termite Control Co. (“Respondent Don-Pedro” or “Don-Pedro”). The Operator's  
6 License was in full force and effect at all times relevant to the charges brought herein and will  
7 expire on June 30, 2012, unless renewed.

### 8 JURISDICTION

9 4. This Accusation is brought before the Structural Pest Control Board (Board),  
10 Department of Pesticide Regulation, under the authority of the following laws. All section  
11 references are to the Business and Professions Code unless otherwise indicated.

12 5. Code section 8625 states:

13 The lapsing or suspension of a license or company registration by  
14 operation of law or by order or decision of the board or a court of law, or the  
15 voluntary surrender of a license or company registration shall not deprive the  
16 board of jurisdiction to proceed with any investigation of or action or disciplinary  
17 proceeding against such licensee or company, or to render a decision suspending  
18 or revoking such license or registration.

17 6. Code section 118, subdivision (b), states:

18 The suspension, expiration, or forfeiture by operation of law of a license  
19 issued by a board in the department, or its suspension, forfeiture, or cancellation  
20 by order of the board or by order of a court of law, or its surrender without the  
21 written consent of the board, shall not, during any period in which it may be  
22 renewed, restored, reissued, or reinstated, deprive the board of its authority to  
23 institute or continue a disciplinary proceeding against the licensee upon any  
24 ground provided by law or to enter an order suspending or revoking the license or  
25 otherwise taking disciplinary action against the licensee on any such ground.

### 23 STATUTORY AND REGULATORY PROVISIONS

24 7. Code section 8516 states, in pertinent part:

25 (b) No registered company or licensee shall commence work on a contract,  
26 or sign, issue, or deliver any documents expressing an opinion or statement  
27 relating to the absence or presence of wood destroying pests or organisms until an  
28 inspection has been made by a licensed Branch 3 field representative or operator . . .

1 A written inspection report conforming to this section and a form  
2 approved by the board shall be prepared and delivered to the person requesting the  
3 inspection or to the person's designated agent within 10 business days of the  
4 inspection, except that an inspection report prepared for use by an attorney for  
5 litigation purposes is not required to be reported to the board. The report shall be  
6 delivered before work is commenced on any property. The registered company  
7 shall retain for three years all original inspection reports, field notes, and activity forms.

8 Reports shall be made available for inspection and reproduction to the  
9 executive officer of the board or his or her duly authorized representative during  
10 business hours. Original inspection reports or copies thereof shall be submitted to  
11 the board upon request within two business days. The following shall be set forth  
12 in the report:

13 (11) Information regarding the pesticide or pesticides to be used for their control  
14 as set forth in subdivision (b) of Section 8538.

15 8. Code section 8518 states, in pertinent part:

16 . . . .

17 Failure of a registered company to report and file with the board the address of any  
18 Property upon work was completed pursuant to subdivision (b) of the Section 8516 or  
19 Section 8518 is grounds for disciplinary action . . .

20 9. Code section 8519 states, in pertinent part:

21 Certification as used in this section means a written statement by the  
22 registered company attesting to the statement contained therein relating to the  
23 absence or presence of wood-destroying pests or organisms and, listing such  
24 recommendations, if any, which appear on an inspection report prepared pursuant  
25 to Section 8516, and which relate to (1) infestation or infection of  
26 wood-destroying pests or organisms found, or (2) repair of structurally weakened  
27 members caused by such infestation or infection, and which recommendations  
28 have not been completed at the time of certification.

Any registered company which makes an inspection report pursuant to  
Section 8516, shall, if requested by the person ordering the inspection report,  
prepare and deliver to that person or his or her designated agent, a certification, to  
provide:

(a) When the inspection report prepared pursuant to Section 8516 has  
disclosed no infestation or infection: "This is to certify that the above  
property was inspected on \_\_\_\_ (date) in accordance with the Structural Pest  
Control Act and rules and regulations adopted pursuant thereto, and that no  
evidence of active infestation or infection was found in the visible and  
accessible areas.

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10. Code section 8636 states:

Disregard and violation of the building laws of the state, or any law of its political subdivisions, or of the safety laws, health laws, or compensation insurance laws of the state relating to the practice of structural pest control is a ground for disciplinary action.

11. Code section 8638 states:

Failure on the part of a registered company to complete any operation or construction repairs for the price stated in the contract for such operation or construction repairs or in any modification of such contract is a ground for disciplinary action.

12. Code section 8641 states:

Failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for wood-destroying pests or organisms, or furnishing a notice of work completed prior to the completion of the work specified in the contract, is a ground for disciplinary action.

13. Code section 8642 states that "[t]he commission of any grossly negligent or fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a registered company is a ground for disciplinary action."

14. Code section 8644 states:

Fraud or misrepresentation, after inspection, by any licensee or registered company engaged in pest control work of any infestation or infection of wood-destroying pests or organisms found in property or structures, or respecting any conditions of the structure that would ordinarily subject structures to attack by wood-destroying pests or organisms, whether or not a report was made pursuant to Sections 8516 and 8517 of this code, is a ground for disciplinary action

15. Code section 8646 states:

Disregard and violation of pesticide use and application, structural pest control device, fumigation, or extermination laws of the state or of any of its political subdivisions, or regulations adopted pursuant to those laws, is a ground for disciplinary action.

16. Code section 8652 of the Code states:

Failure of a registered company to make and keep all inspection reports, field notes, contracts, documents, notices of work completed, and records, other than financial records, for a period of not less than three years after completion of any work or operation for the control of structural pests or organisms, is a ground for

1 disciplinary action. These records shall be made available to the executive officer  
of the board or his or her duly authorized representative during business hours.

2 17. Code section 8691 states:

3 No registered company shall engage in any of the practices for which is  
4 required to be registered by this chapter, unless it maintains such insurance policy or  
bond as specified in this article.

5 18. Code section 8692 states, in pertinent part:

6 An "insurance policy" as used in this article means a contract of liability  
7 insurance issued by an insurance company authorized to transact business in this state . . .  
8 The insurance policy shall provide minimum limits of twenty-five thousand dollars  
9 (\$25,000) for any one loss due to bodily injury, sickness or disease, . . . and  
twenty-five thousand dollars (\$25,000) minimum for one loss due to injury or  
destruction of property, including the loss of use thereof.

10 19. Code section 8695 states:

11 The violation of any provision of this article is a misdemeanor and shall be  
12 grounds for suspension or revocation by the board of the operator's license of the  
13 owner or qualifying manager or managers of the registered company and of the  
company registration.

14 20. Section 125.3 of the Code states, in pertinent part, that a Board may request the  
15 ~~administrative law judge to direct a licentiate found to have committed a violation or violations of~~  
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
17 enforcement of the case.

18 21. Title 16, California Code of Regulations, section ("Regulation") 1990  
19 states, in pertinent part:

20 (a) All reports shall be completed as prescribed by the board. Copies filed with the  
21 board shall be clear and legible. All reports must supply the information required by  
Section 8516 of the Code and the information regarding the pesticide or pesticides used as  
set forth in Section 8538 of the Code, and shall contain or describe the following:

22 22. . . Title 16, California Code of Regulations, section ("Regulation") 1991, states, in  
23 pertinent part:

24 (a) Recommendations for corrective measures for the conditions found shall be  
25 made as required by paragraph 10 of subdivision (b) of Section 8516 of the code and shall  
also conform with the provisions of Title 24 of the California Code of Regulations and  
any other applicable local building code, and shall accomplish the following: . . .

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2825 ACTON STREET, BERKELEY, CA

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2           23.     On February 21, 2007, Linda R. Lewallen (Lewallen) completed an application to  
3 refinance her home on her property located at 2828 Acton Street, Berkeley, California 94703  
4 (“the property”). A condition of the loan was that a pest control clearance (“certification”) be  
5 issued.

6           24.     On February 26, 2007, Respondent Don-Pedro issued a complete inspection report  
7 of the property on behalf of DonPedro’s Termite Control Company (“subject company”). In the  
8 Wood Destroying Pest and Organisms (WDO) complete inspection report, Respondent Don-  
9 Pedro reported, among other things, wood decay fungi to the substructure below the front porch,  
10 subfloor, stucco sheathing, floor joists, girders, studs, load posts, mudslides, access door, roof  
11 eaves, roof sheathing, and rafter rails. Respondent Don-Pedro also reported subterranean termite  
12 activity and wood boring beetle infestation. A recommendation was made to remove and replace  
13 all damaged wood and install new material, and to chemically treat the infestations of termites  
14 and beetles. Several other recommendations were issued to correct deficiencies with flooring and  
15 floor coverings, cabinetry-plumbing, and grading in the substructure. The chemical that was  
16 recommended to be used for control of the wood boring beetles, Termidor/active ingredient,  
17 Fiprinol, is not labeled to control wood boring beetles in California. Items 1J and 1K were  
18 missing from the report body, but were on the diagram.

19           25.     On March 1, 2007, Respondent Don-Pedro issued a WDO complete report on the  
20 property. The report was identical to the February 26, 2007 inspection, except that the date of the  
21 inspection shows March 1, 2007, and contains a new finding and recommendation referencing  
22 subterranean termite tubes, with a recommendation to remove the tubing. Termidor was  
23 recommended to be used to control of wood boring beetles, even though Termidor is not labeled  
24 for treatment of wood boring beetles. The report included the missing numeric/alph items from  
25 the February 26, 2007 report, Items 1J and 1K

26           26.     On March 5, 2007, the subject company issued an Agreement and a Standard  
27 Notice of Work Completed and Not Completed (NOC) indicating that all the section one work  
28 outlined in the “2/25/07” inspection had been completed, and certified the property to be free of

1 evidence of active infestation or infection in the visible and accessible areas. The date of  
2 inspection the NOC referred to was listed as February 25, 2007 even though the inspection  
3 reports are dated February 26, 2007 and March 1, 2007. On the same day, after reviewing the  
4 document, Lewallen signed the work agreement and dated it for March 5, 2007, and also received  
5 a copy of the aforementioned NOC dated March 5, 2007.

6 27. On March 6, 2007, Lewallen was asked to return to the subject company's office  
7 to sign another work agreement, which at the request of Respondent Don-Pedro, she backdated to  
8 February 26, 2007 to coincide with the WDO report dated February 26, 2007. The work had not  
9 commenced on her property at the time.

10 28. On March 19, 2007, after escrow closed, Lewallen received a refinance loan on the  
11 property based in part on the Respondent Don-Pedro's inspection reports dated February 26, 2007  
12 and March 1, 2007, and his NOC and certification dated March 5, 2007. On the same day,  
13 Respondent Don-Pedro was paid the full amount of \$14,715.00 invoiced on the NOC dated  
14 March 5, 2007. On March 20, 2007, the subject company commenced work on the property.

15 29. On March 27, 2007, the subject company issued another NOC indicating that  
16 several items reported as completed previously in the March 5, 2007 NOD were, in fact, not  
17 completed. The subject company again certified the property free of infestation and infection  
18 with no exceptions, even though not all of the section one work had been completed.

19 30. On February 14, 2008, Respondent Don-Pedro submitted a Declaration, written  
20 under penalty of perjury to Board Specialist Ackerman (Ackerman), which attested to the fact  
21 that the records were not available "at this time," and that he had not performed any Branch 3  
22 activities from March 3, 2007 through February 14, 2008.

23 31. On April 7, 2009, Board Specialist Ackerman (Ackerman) conducted an office  
24 compliance inspection of the subject company and asked Respondent Don-Pedro to provide  
25 copies of recent pesticide use reports (PUR). Don-Pedro told Ackerman that he had not been  
26 doing much work, was not applying pesticides, and did not have any current reports. In response  
27 to being told that he needed to be filing the PUR's on a monthly basis with the County

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1 Agriculture Department even though he reported that he did not use any pesticides, Don-Pedro  
2 told Ackerman that he understood and would begin filing the PUR's.

3 32. Before the office compliance inspection, Ackerman's WDO search of the subject  
4 company, which queried activity dates of March 1, 2006 to March 31, 2009, found two  
5 completions performed at the property and another property located in San Francisco, California,  
6 it did not contain either of these addresses as having been filed with the Board. Don-Pedro told  
7 Ackerman that he did not know why the inspection reports were not filed.

8 33. At the conference, Respondent Don-Pedro also showed Ackerman the subject  
9 company's log of activities performed from December 2006 through May 2007. This log shows  
10 that the property was inspected on March 1, 2007, even though the WDO provided to Ackerman  
11 by Respondent is dated February 26, 2007. When asked why the subject company's inspection  
12 log contained the date of March 1, 2007 when the WDO was dated February 26, 2007,  
13 Respondent first told Ackerman that that was the date the report was entered into the log. After a  
14 few minutes of reviewing the file, Respondent attributed "mistakes" to former employees and  
15 then told Ackerman that March 1, 2007 was the date the inspection took place. When asked by  
16 Ackerman to see a copy of the March 1, 2007 inspection report, Don-Pedro told him that he  
17 issued the March 1, 2007 report after he laid off his secretary. While reviewing his records,  
18 Respondent Don-Pedro noticed that the report was incorrectly dated and was missing findings and  
19 recommendations and told Ackerman that he issued another inspection report with the corrected  
20 information included and told him that he "stored it" in his computer. Ackerman told Respondent  
21 Don-Pedro that he needed to maintain a copy of the original inspection report in the file. Don-  
22 Pedro affirmed that the March 1, 2007 was the corrected inspection report. Ackerman explained  
23 to him that that report was incorrect and told him how to correct errors in the original inspection  
24 report. At the conference, Ackerman could not locate any chemical records regarding the  
25 property.

26 35. On December 5, 2006, the subject company's insurance policy number  
27 CLS1212411, issued by Burns & Wilcox Ltd., was canceled. The insurance policy remained  
28 canceled through June 20, 2007.



1 36. No building permit was issued on the property even though the work performed on  
2 the property required a building permit to be issued by the City of Berkeley.

3 37. On March 4, 2009, Kent J. Stonebraker ("Stonebraker"), OPR 5580, performed a  
4 complete inspection of the property and reported the following findings: subterranean termite  
5 infestation, damage, tubing, wood decay fungi, wood boring beetle infestation, moisture barrier  
6 failure beneath the front porch, and inadequate ventilation. Stonebraker's recommendation was  
7 to apply chemical treatment to control the infestations, and replace damaged wood and related  
8 components.

9 38. On June 24, 2009, Ackerman's limited inspection of the property's structure,  
10 exterior, kitchen, utility room and bathroom floors show the following: a) Subterranean termite  
11 migratory tubing in the substructure; b). Wood decay fungi damage to the eaves and rafter tails;  
12 c). Wood decay fungi and or subterranean termite damage to the cripple wall studs framing,  
13 mudsill, stucco sheathing subflooring in the structure, front porch, and entry; d) new mudsill not  
14 bolted to the foundation; e). cellulose debris on the soil; f) wood decay fungi to the rear porch; g)  
15 ~~excessive moisture damaged floor covering in the kitchen, utility room and bathroom; and h)~~  
16 evidence of leaking down drains and roofing.

17 FIRST CAUSE FOR DISCIPLINARY ACTION

18 (Failure to Comply with Financial Responsibility Provisions)

19 39. Respondents are subject to disciplinary action pursuant to Section 8695 of the  
20 Business and Professions Code in that they failed to comply with the provisions of the Structural  
21 Pest Control Act relating to Article 9 Financial Responsibility by working without required  
22 insurance in violation of Code section 8691 and by failing to maintain an insurance policy in  
23 violation of Code section 8692, as follows: Insurance policy number CLS1212411 was canceled  
24 on December 5, 2006 and they continued to perform inspections, repairs and issue Standard  
25 Notice of Work Completed and Not Completed without proper insurance.

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1 work contracts dated February 26, 2007 and March 1, 2007 because wood decay fungi and  
2 subterranean termite infestation and damage remained.

3 SIXTH CAUSE FOR DISCIPLINARY ACTION

4 (Improper Certification)

5 44. Respondents are subject to disciplinary action pursuant to Section 8641 of the  
6 Business and Professions Code in that as to the property, they failed to comply with Code section  
7 8519, as follows: Respondents improperly certified the property to be free of infestation and  
8 infection in the notice of work completed dated March 5, 2007 and March 27, 2007 when, in fact,  
9 wood decay fungi, excessive moisture, subterranean termite damages, and evidence of  
10 infestations remained.

11 SEVENTH CAUSE FOR DISCIPLINARY ACTION

12 (Failure to File Addresses of Properties Inspected with Board)

13 45. Respondents are subject to disciplinary action pursuant to Section 8516 of the  
14 Business and Professions Code and Title 16, California Code of Regulations, section 1996.3 in  
15 that they failed to file the addresses of properties inspected with the Board, as follows: The  
16 address of the property inspected on February 26, 2007 and March 1, 2007 were not filed.

17 EIGHTH CAUSE FOR DISCIPLINARY ACTION

18 (Failure to File Addresses of Properties Where Work Completed)

19 46. Respondents are subject to disciplinary action pursuant to Section 8518 of the  
20 Business and Professions Code and Title 16, California Code of Regulations, section 1996.3 in  
21 that they failed to file the addresses of properties where work was completed, as follows: The  
22 address of the property where work was completed on March 27, 2007 was not filed with the  
23 Board.

24 NINTH CAUSE FOR DISCIPLINARY ACTION

25 (Failure to Comply with Building Codes)

26 47. Respondents are subject to disciplinary action pursuant to Section 8636 of the  
27 Business and Professions Code in that they failed to comply with the building laws of the City of

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1 Berkeley, California, as follows: Repairs reported as completed required a building permit that  
2 was not obtained.

3 TENTH CAUSE FOR DISCIPLINARY ACTION

4 (Improperly Recommending Use of Pesticide Not Properly Labeled)

5 48. Respondents are subject to disciplinary action pursuant to Section 8646 of the  
6 Business and Professions Code and Title 16, California Code of Regulations, section 1991, as  
7 follows: Respondents improperly recommended the use of pesticide not labeled for usage on the  
8 target pest in that the February 27, 2007 and March 1, 2007 inspection reports improperly  
9 recommended the use of the chemical Termidor for control of wood destroying beetles. Termidor  
10 is not labeled for usage on wood destroying beetles in California The March 4, 2007 and March  
11 27, 2007 NOCs improperly indicated that item as being completed in accordance with the  
12 Structural Pest Control Act.

13 ELEVENTH CAUSE FOR DISCIPLINARY ACTION

14 (Failure to Maintain Records)

15 49. Respondents are subject to disciplinary action pursuant to Section 8652 of the  
16 Business and Professions Code and Title 16, California Code of Regulations, section 1970(b), as  
17 follows: Respondents failed to keep records for the amount of pesticides used or the person who  
18 applied them.

19 TWELFTH CAUSE FOR DISCIPLINARY ACTION

20 (Failure to Report Excessive Moisture Condition Leading to Infestation or Infection)

21 50. Respondents are subject to disciplinary action pursuant to Section 8516(b)(7) and  
22 Title 16, California Code of Regulations, section 1990(a), as follows: Respondents failed to  
23 report the excessive moisture condition that lead to the infestation or infection of a wood  
24 destroying pest or organism in the inspection report dated February 26, 2007. The report  
25 indicated fungi and subterranean termite damage beneath the front porch, but did not reveal the  
26 cause of the fungi damage.

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1 d. On February 8, 1995, Respondent paid a fine of \$100.00 levied by the Alameda  
2 County Agricultural Commission for violation of Code section 8505.17.

3 e. On June 12, 2001, Respondent paid a \$25 fine levied by the Board for  
4 Respondent's violation of Code section 8538.

5 **OTHER MATTERS**

6 56. Code section 8620 provides, in pertinent part, that a respondent may request that a  
7 civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of 1 to 19 days,  
8 or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request must be made  
9 at the time of the hearing and must be noted in the proposed decision. The proposed decision  
10 shall not provide that a civil penalty shall be imposed in lieu of a suspension.

11 57. Pursuant to Code section 8624, if Operator's License Number OPR 8197, issued to  
12 Respondent George Don-Pedro, is suspended or revoked, the Board may suspend or revoke  
13 Company Registration Certificate Number PR 1450, issued to DonPedro Termite Control Co.,  
14 with George Don-Pedro as owner and qualifying manager.

15 ~~58.~~ Pursuant to Code section 8624, the causes for discipline established as to Respondent  
16 DonPedro Termite Control Co. likewise constitute causes for discipline against George Don-  
17 Pedro regardless of whether George Don-Pedro had knowledge of or participated in the acts or  
18 omissions which constitute cause for discipline against Respondent DonPedro Termite Control  
19 Co.

20 59. Pursuant to Code section 8654, if discipline is imposed on Operator's License  
21 Number OPR 8197, issued to Respondent George Don-Pedro, George Don-Pedro shall be  
22 prohibited from serving as an officer, director, associate, partner, qualifying manager, or  
23 responsible managing employee for any registered company during the time the discipline is  
24 imposed, and any registered company which employs, elects, or associates George Don-Pedro  
25 shall be subject to disciplinary action.

26 60. Code section 8622 provides, in pertinent part, that Respondents shall submit an  
27 inspection fee of not more than \$125. If a reinspection is necessary, a commensurate reinspection  
28 fee shall be charged.

